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C.D. 10/1

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

W.P. No. 4632 /2004

PETITIONER : Zahoor Mohammad S/o Late Noor Mohammad Aged 67 years Resi dent of Keshkal Distt. Bastar (C.G.)

P.R. No. 3407/04
Presented by Shri Zahoor Mohd.
dated 21-9-04

Vs

RESPONDENTS :

1. State of Chhattisgarh through Secretary, Scheduled Tribes & Scheduled Caste Welfare Deptt., Raipur

2. The Commissioner, Scheduled Tribe & Scheduled Caste Development Department, State of Chhattisgarh, Raipur.

3. The Collector, Baster District, Jagdalpur (C.G.)

4. ~~Smt. Gayatri Netam,~~ Name deleted. The then Asstt. Commissioner Tribal Development, At present Asstt. Project Administrator, Kamar Project, Gariyaband, Distt.: Raipur (C.G.)

5. Asstt. Commissioner, Tribal Development, Baster District, Jagdalpur (C.G.)

RECEIVED COPY 21/9/04 Clerk to A.G. Bilaspur

Amendment incorporated as per order dtd. 25/2/05 of the Hon'ble Court.

Sd/-

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA

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मामला क्रमांक W.P. 4632/ **सन् 2004**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	10-5-2005 On a mention being made, the matter is taken up for hearing. Petitioner in person. Mr. G.K. Beriwal, Deputy Advocate General for the State/ respondents. Heard. The petitioner has preferred this writ petition under Article 226/ 227 of the Constitution of India, with the prayer that a writ of certiorari quashing the impugned order contained in Annexure P-12 be issued; a writ of certiorari quashing the Departmental Enquiry as contained in Annexure P-11 be issued; a writ of mandamus directing the respondents to fix in Principal grade as contained in Annexures P-3 & P-4 be issued; direct the respondents to clarify the pension case and disburse all effective emoluments and other claims as contained in Annexure P-1; and direct the State Government to provide sanction under Section 197 of the Cr.P.C. as contained in Annexure P-10. The case of the petitioner is that he was appointed in the month of July, 1962, in Government service and on completion of 60 years of age, he retired from the Tribal Welfare Department on 31-3-1998 from Office of the Principal, Higher Secondary School, Orchha, District: Bastar, Chhattisgarh. Due to the pendency of Departmental Enquiry against the petitioner since November, 1987, pension and other claims	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

are not being sanctioned to him in spite of several representations made by him. The petitioner submitted an application to the Collector, respondent No.3 herein, on 10-6-2003 regarding clarification of pension, Departmental Enquiry and other pending claims. The petitioner was not promoted in June, 1984, but he had filed a writ petition in the year 1985 before the High Court at Jabalpur which was transferred to the State Administrative Tribunal, Jabalpur, which came to be decided on 13-9-1995 directing the respondents to consider the case of the petitioner. On consideration of the case of the petitioner, the Department did not found the petitioner fit for promotion, so the Department passed order on 9-7-1998 (Annexure P-6), whereas this order was for the period of 1984, it has no concern with the promotion order. Being aggrieved, the petitioner moved the Governor of Chhattisgarh for permission to file criminal case, but despite the application dated 21-7-2003 and notice (Annexure P-7), the respondents have not taken any action.

In spite of several opportunities granted to the State/ respondents, no return has been filed on their behalf. First of all on 10-2-2005, Mr. Sandeep Dubey, Panel Lawyer appeared on behalf of the State/respondents. On 25-2-2005 amendment was incorporated and the State/respondents were directed to file reply. On 22-3-2005 again return was not filed, therefore, 15 days time was granted to the State/respondents to file return. On 5-4-2005 again last opportunity

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was granted to the respondents to file return within a period of four weeks, and it was made clear that if the return is not filed within the stipulated time, the matter will be decided in the absence of return. Therefore, in the above circumstances, this Court is forced to decide this petition without return.

As far as the case of the petitioner regarding fixation of pension considering him as Principal is concerned, the said claim of the petitioner was rejected by the respondents and it has been mentioned that in view of the order of the State Administrative Tribunal, Annexure P-5, the case of the petitioner for promotion on the post of Principal was considered, and vide order dated 9-7-1998 the said claim was rejected after consideration by the Departmental Promotion Committee. The petitioner filed an original application before the SAT, Jabalpur, against the order dated 12-9-1991 (Annexure A-2) whereby the promotion order dated 30-7-1990 was cancelled. Vide order dated 23-5-2002 (Annexure P-17), the learned Tribunal rejected the request of the petitioner and it was held that the applicant has no case against Annexure A-2. It was further held that there are very clear Government instructions that nobody should be promoted during the pendency of Departmental Enquiry. It is clear that the promotion order was passed due to mistake and the order Annexure A-2 has been issued merely to correct that mistake. By the same order, the learned Tribunal directed the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	respondents to decide the Departmental Enquiry within three months from the date of receipt of copy of the order. However, even till today, the enquiry has not been decided. Perusal of Annexure P-8 shows that findings of the enquiry was sent by the Enquiry Officer to the Commissioner, Tribal Development, Madhya Pradesh, Bhopal on 31-12-1997, but, it appears from the record that no decision has been taken on that enquiry report. It is unfortunate that enquiry is pending against the petitioner since 1987, and even on expiry of 18 years enquiry has not been concluded. Even after order dated 23-5-2002 (Annexure P-17) passed by the SAT that enquiry be completed within a period of three months, no decision on enquiry is taken. Therefore, in the light of proviso (b) to sub-rule (4) of Rule 9 of the Chhattisgarh Civil Services (Pension) Rules, 1976, the petitioner is entitled for full pension, however, that will be subject to the final order as per the provisions of clause (c) of sub-rule (4) of Rule 9. In the circumstances, (i) respondent No.3 is directed to decide the pension case of the petitioner granting him full pension as admissible to him in accordance with the rules, however, that will be subject to final order of the enquiry; and (ii) respondent No.2 is also directed to decide and pass final order in respect of the enquiry within a period of six months from the date of receipt of a copy of this order, in accordance	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

with sub-rule (2) (a) of Rule 9 of the Chhattisgarh Civil Services (Pension) Rules, 1976. If no order is passed within this period then the enquiry shall be treated as quashed. As mentioned earlier, enquiry against the petitioner is pending since 1987, and the respondents are not taking any decision on that enquiry. Therefore, it is unjust, unfair and unreasonable to allow the inquiry to remain pending for indefinite period. Hence, the respondents are also directed to consider the case of the petitioner for other retiral benefits admissible to him, in accordance with law, within a period of three months from the date of receipt of copy of this order.

As far as quashing the order dated 12-9-1991 (Annexure P-12) in which it has been mentioned that the petitioner was not entitled for promotion on account of pendency of enquiry is concerned, if the final order is not passed on enquiry within six months, in that case, in the light of the above order the respondents shall consider the case of the petitioner as to whether setting apart the enquiry part the petitioner was entitled for promotion on the post of Principal, and the respondents should consider the case of the petitioner in respect of the post of Principal and consequently, if the petitioner is found fit for promotion and is promoted, then his pension case shall be considered accordingly.

However, the petitioner has not been able to place on record any sufficient material upon which this Court can direct the respondents to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Soma	consider for issuance of sanction under Section 197 of the Cr.P.C. Hence, no such direction can be given. With the above observations and directions the petition stands disposed of. Parties are entitled for certified copy of this order. Sd/- L.C.BHADOO Judge	